

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**DONNAVIN DESEAN MARCUS
BROWN,**

Petitioner,

v.

SHERIFF ERIC J. LEVETT,

Respondent.

1:15-cv-2506-WSD

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Justin S. Anand's Final Report and Recommendation [5] ("R&R"). The R&R recommends that this action be dismissed without prejudice.

I. BACKGROUND

On July 13, 2015, Petitioner Donnavin Desean Marcus Brown ("Petitioner") submitted a letter [1] seeking habeas relief. Plaintiff did not pay the required \$5.00 filing fee or seek leave to proceed *in forma pauperis*. On July 22, 2015, the Magistrate Judge ordered [2] Petitioner to complete and return a habeas corpus petition form. On August 7, 2015, Petitioner submitted his completed habeas corpus petition form [3] ("Habeas Petition").

In his Habeas Petition, Petitioner states that, on May 16, 2011, he entered a guilty plea in the Superior Court of Rockdale County, and that he was sentenced to ten (10) years imprisonment for burglary. ([3] at 1). Petitioner did not appeal his conviction(s) and sentence in state court. (Id. at 2).

On May 12, 2015, Petitioner signed and filed a civil rights action in this Court, (id. at 3), which was docketed on June 1, 2015, and dismissed on July 2, 2015. See Brown v. Levett, No. 1:15-cv-1970-WSD (N.D. Ga. July 2, 2015). One of Petitioner's submissions in that case reveals that his probation arising from his May 2011 conviction(s) was revoked on June 1, 2015, for "technical violations," and he was sentenced to serve two (2) more years of his original sentence. See Brown, No. 1:15-cv-1970 (ECF No. 6 at 3-8).

On August 27, 2015, the Magistrate Judge issued his R&R, following his review of the Habeas Petition pursuant to Rule 4 of the Rules Governing Section 2254 cases. In it, the Magistrate Judge determined that it is apparent from the face of Petitioner's Habeas Petition that he has not exhausted his state court remedies through one complete round of the state's appellate review process with respect to either his May 16, 2011, conviction(s) and sentence or his June 1, 2015, probation revocation. (R&R at 4). The Magistrate Judge recommended this action be

dismissed without prejudice for lack of exhaustion. (Id.). He recommended the Court deny a certificate of appealability (“COA”). (Id. at 4-5).

Petitioner did not file any objections to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Where, as here, no party has objected to the report and recommendation, a court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

B. Analysis

The Magistrate Judge determined that it is apparent from the face of Petitioner’s Habeas Petition that he has not exhausted his state court remedies through one complete round of the state’s appellate review process with respect to either his May 16, 2011, conviction(s) and sentence or his June 1, 2015, probation

revocation. (R&R at 4). The Magistrate Judge recommended that this action be dismissed without prejudice. The Court finds no plain error in the Magistrate Judge's findings and recommendation, and this action is dismissed without prejudice. See Slay, 714 F.2d at 1095.

The Magistrate Judge also recommended that a COA should not be issued, because jurists of reason would not find it debatable whether the Habeas Petition should be dismissed for lack of exhaustion. (R&R at 4-5). The Court finds no plain error in the Magistrate Judge's findings and recommendation, and a COA is denied. See Slay, 714 F.2d at 1095.

III. CONCLUSION


Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Justin S. Anand's Final Report and Recommendation [5] is **ADOPTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that a Certificate of Appealability is **DENIED**.

SO ORDERED this 30th day of March, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE